

Paramount Communications Inc.

Daniel Victor
Senior Counsel

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 29, 1993

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

RE: PP Docket No. 93-21
Inquiry Into Sports Programming Migration

Dear Ms. Searcy:

On behalf of Madison Square Garden Corporation, I am transmitting herewith an original and nine copies of its comments in response to the Commission's Notice of Inquiry in the above-referenced proceeding.

Respectfully submitted,

Daniel Victor

Daniel Victor

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Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
Federal Communications Committee

In The Matter of
Implementation of Section 26 of the)
Cable Television Consumer Protection) PP Docket No. 93-21
and Competition Act of 1992)

To: The Commission

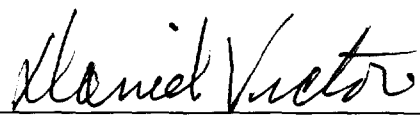
Inquiry into Sports Programming Migration

COMMENTS OF MADISON SQUARE GARDEN CORPORATION

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TABLE OF CONTENTS

Summary	iii
Introduction	2
Statement of Interest	2
Preliminary Statement	3
I. MSG Network's Carriage of Knicks, Rangers and Yankees Games Has Contributed to Consumer Welfare by Enhancing and Preserving the Public's Access To Such Games	5
A. Knicks and Rangers Games	5
1. History of Video Distribution of Knicks and Rangers Games	6
2. Broadcast Television's Diminishing Interest in Carrying Knicks and Rangers Games	7
3. Conclusion	10
B. Yankee Games	11
1. History of Video Distribution of Yankee Games	12
2. MSG Network's Attempts to Arrange Telecasts of 50-55 Yankee Games	13
3. Conclusion	14
4. About the Future	15

II. "Consumer Welfare" is Served by MSG Network's Carriage of an Extensive and Varied Menu of Sporting Events and Commentary	16
1. The Menu of Sports Programming Available to Viewers in This Region Has Grown Enormously.....	17
2. The Carriage of Sports Programming on MSG Network has Increased Consumer Access To Such Programming	22
III. Conclusion	24

SUMMARY

Madison Square Garden Corporation owns the leading sports arena in the New York region, as well as the New York Knickerbockers and Rangers, and the Madison Square Garden Network ("MSG Network"). MSG Network is a regional basic cable sports channel carrying national and local sports programming, including a substantial number of Knicks, Rangers and New York Yankees games.

The Commission's inquiry into trends in sports programming migration should not focus exclusively on whether certain sporting events once telecast over-the-air are now carried on cable. Rather, the Commission must consider whether cable carriage of these events, many of which faced extinction on broadcast television, has served the public interest. We submit that MSG Network's carriage of Knicks, Rangers and New York Yankees games has promoted consumer welfare by increasing the public's access to such games.

Knicks and Rangers games were telecast in New York for many years on a VHF commercial independent station. However, at the conclusion of the 1988/89 season, that station no longer had any interest in broadcasting Knicks and Rangers games. When Madison Square Garden was unsuccessful in finding another broadcaster to carry the games, the games were rescued by MSG Network for basic cable carriage. In essence, a cable programmer -- MSG Network -- preserved viewer access to games that would otherwise be blacked out, thereby enhancing consumer welfare.

MSG Network's experience with respect to New York Yankees games refutes any notion that exclusive rights contracts with cable programmers inevitably result in sports programming migration. Although it has had the exclusive right to carry Yankees games since 1990, MSG Network has not done so. On the contrary, despite the flagging interest of New York broadcasters in carrying local teams, MSG Network has retained -- and is continuing actively to seek -- broadcast outlets for carriage of at least 50 regular Yankees games per season, the same number of games telecast by local broadcasters prior to MSG Network's acquisition of exclusive rights to Yankees games. Furthermore, 100 Yankees games per season that previously were carried on a premium cable service are now offered on MSG Network's basic cable service.

The growth in diversity, quality and quantity of the sports programming delivered by MSG Network to the New York Tri-State area has contributed significantly to consumer welfare in this region in other ways, as well. Because of MSG Network's growth into a full-service regional sports network, the regional audience now receives a far more comprehensive and diverse menu of sports programming than ever before. Moreover, MSG Network's delivery of its broad array of sports programming has been realized without taking from over-the-air television, sports programming that was regularly carried by broadcasters in this market. Finally, MSG Network has the potential of reaching millions of sporting fans in the region who would otherwise

find it difficult or impossible to receive sporting events telecast by stations located in the New York Metropolitan area.

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To: The Commission

Inquiry into Sports Programming Migration

COMMENTS OF MADISON SQUARE GARDEN

Madison Square Garden Corporation¹ ("MSG"), hereby files the enclosed comments in response to the Commission's Notice of Inquiry Into Sports Programming Migration, FCC 93-21 (released February 9, 1993). The Commission in its Notice of Inquiry ("NOI") seeks information required to conduct the sports programming study mandated by Congress in the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("Cable Act of 1992").

¹ Madison Square Garden Corporation is a wholly-owned subsidiary of Paramount Communications Inc., the parent of the licensees of UHF television stations WDCA, Washington, D.C.; WLFL, Raleigh, NC; WTXF, Philadelphia, PA; KRRT, Kerrville, (San Antonio), TX; KTXA, Arlington (Dallas/Fort Worth), TX; and KTXH, Houston, TX.

INTRODUCTION

Statement of Interest

MSG owns and operates Madison Square Garden, one of the most popular sporting arenas in the country. MSG also owns the New York Knickerbockers basketball team ("Knicks"), a member of the National Basketball Association, and the New York Rangers hockey club, a member of the National Hockey League. In addition, MSG conceived, developed, owns and operates the Madison Square Garden Network ("MSG Network"), a regional, basic² cable service that offers a wide variety of national and regional sporting events to residents of New York, New Jersey and Connecticut ("Tri-State" area or region), as well as of upstate New York. This offering of sports events currently includes the delivery of 78 Knicks, 75 Rangers, and 108 New York Yankees regular season games per year.

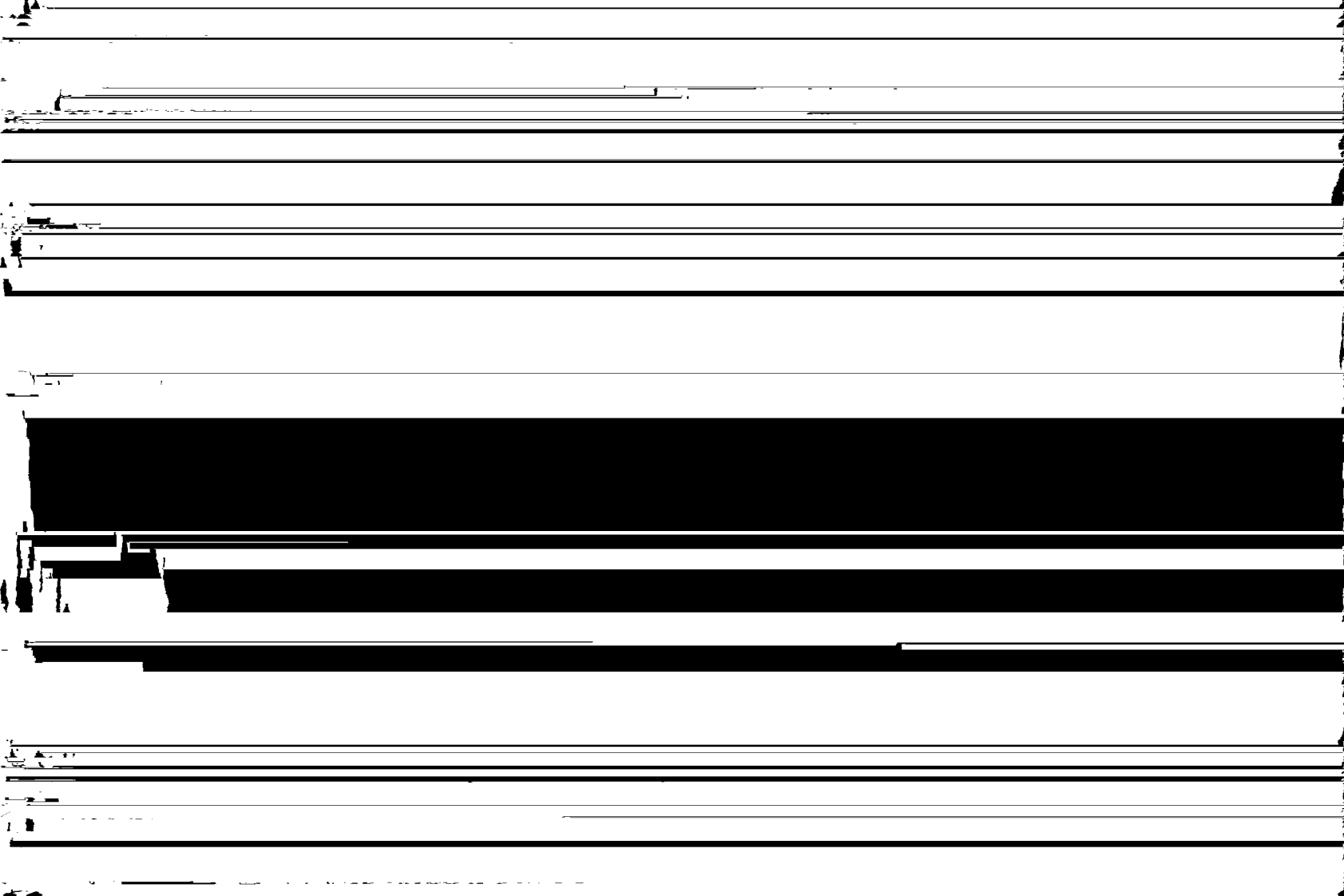
As the owner of professional basketball and hockey teams, and of a cable network that carries a vast array of diverse local and national sporting events and commentary, MSG has a keen interest in providing information to the Commission based on its experience in the marketplace. This submission will help the Commission to present in its sports programming migration study to Congress a full and accurate description of the interplay between television broadcasting and cable-

² The term "basic" as used in this submission means that MSG's agreement with cable operators, with some exceptions, prohibits the cable operator from charging a premium for access to MSG Network. Roughly 75% of MSG Network's subscribers enjoy this protection.

casting of sports programming, and to comprehensively examine the so-called "migration" of sporting events from distribution over-the-air to distribution via subscription cable media.

Preliminary Statement

At the outset, it is important to identify the subject which Congress believed was worthy of investigation in this proceeding. The Cable Act of 1992 called for a study of "trends in the migration" of sports programming from broadcast television to cable and pay-per-view channels. Cable Act of 1992, Section 26(a). The NOI defines "sports programming migration" as "the movement of sports



been reduced thereby.³ Indeed, the NOI has recognized that the existence of a trend towards the migration of sports programming from broadcast television to cable does not compel the conclusion that Congressional intervention in this area is warranted. Only if it can be shown that migration of sports programming has negatively affected "consumer welfare," (NOI at paragraph 9) should the Commission make specific "legislative or regulatory recommendations as [it] considers appropriate." Cable Act of 1992, Section 26(b).

It is MSG's contention that the growth in quality and quantity of the sports programming carried by MSG Network has dramatically contributed to the "consumer welfare" that the Commission identified as "the relevant public policy goal" under the Cable Act of 1992. NOI at paragraph 9. In support of that contention, we will demonstrate that to the extent that MSG Network carries Knicks and Rangers games that at one time were broadcast by local television stations, it has been compelled to do so by broadcast television's declining interest in televising such sporting events. By the same token, MSG Network, which acquired exclusive rights to Yankees games five years ago, has continued to make Yankee games available for telecast in the same numbers as before it obtained exclusive rights to those games, and now carries on its basic cable service 100 Yankee games that used to be carried on a premium cable service. As a result, viewers' access to Knicks, Rangers and Yankees games has been preserved and

³ Committee on Energy and Commerce, U.S. House of Representatives, H.R. Rep. No. 102-628, 102d Cong., 2d Sess. ("House Report") at 125.

enhanced rather than diminished. We will also show that consumers in this region now receive a far more comprehensive and diverse menu of sports via MSG Network than ever before.

I
**MSG Network's Carriage of Knicks,
Rangers and Yankees Games Has
Contributed to Consumer Welfare by
Enhancing and Preserving the
Public's Access to Such Games**

The perceived archetype for sports migration is the cable channel that lures sports programming once shown on broadcast television to exclusive carriage on subscription cable. This perception rests on three fundamental propositions: (i) that the cable channel desires to show the sports programming in question exclusively on cable; (ii) that its broadcast competitors desire to continue broadcasting such sports programming over-the-air; and (iii) that consumer access and welfare are thereby diminished. None of these propositions has proven true in connection with the video distribution of Knicks, Rangers and Yankees games.

A. Knicks and Rangers Games

Historically, a total of 60 Knicks and Rangers games per season were telecast on one of the leading independent television stations in the Tri-State region, WWOR-TV⁴ ("WWOR"). In the mid-1980's,

⁴ WWOR-TV is licensed to Secaucus, NJ, but serves the New York City ADI.

however, that station's interest in continuing to broadcast those games diminished considerably. By 1989, WWOR no longer had any interest in carrying Knicks and Rangers games. The only other available VHF independent broadcast outlet in New York, WPIX-TV⁵ ("WPIX") also was uninterested. Rather than lose complete video distribution of these games, MSG was compelled to add them to the Knicks and Rangers line-up already cable-cast by MSG Network. What superficially might appear as "migration" of 60 Knicks and Rangers games from broadcast television to cable was, in fact, the result of a last-ditch rescue effort by the Knicks and Rangers to preserve for their fans at least some video distribution of their games in the absence of any interest by broadcast television in continuing to do so.

1. History of Video Distribution of Knicks and Rangers Games

Since its creation in 1968, MSG Network historically cable-cast a total of 81 Knicks and Rangers regular season games per year. WWOR telecast over-the-air roughly a total of 60 Knicks and Rangers games per season consistently from 1961 through the mid-1980's.

⁵ WPIX-TV is licensed to New York City. Despite its size, the New York City television market has only two independent VHF stations, WPIX and WWOR, two Spanish language commercial UHF stations, and one home-shopping UHF station. Three of the remaining New York VHF stations are owned and operated by the CBS, NBC and ABC television networks. The last commercial VHF is owned and operated by the Fox Broadcasting Network. The four network stations already carry (or, in Fox's case, in the near future will carry) a full slate of national network prime-time and weekend programming that precludes them from being a viable candidate for the carriage of more than a handful of Knicks and Rangers games.

(See Exhibit 1 for a broadcasting and cable-casting history of Knicks and Rangers games).

Beginning as early as 1977, WWOR and MSG entered into a series of agreements with four-season terms granting WWOR the exclusive right to broadcast a total of 60 Knicks and Rangers games. When the contract was extended for an additional four-season term in August 1981, WWOR was again granted exclusive broadcast rights to the 60 games.

2. Broadcast Television's Diminishing Interest In Carrying Knicks and Rangers Games

In 1985, MSG and WWOR entered into another four-year arrangement, but this time WWOR refused to commit to telecasting 60 games. Instead, it insisted on committing to only a 40 game slate of Knicks and Rangers games, although it retained the right to broadcast up to a total of 60 games. In fact, WWOR broadcast only 45 games during the 1985/86 and 1986/87 seasons.⁶

In addition to unilaterally reducing its telecast of Knicks and Rangers games by 25% for the first two years of the 1985 agreement's term, WWOR began to complain to MSG about the broadcasting package, claiming that low ratings made it uneconomical

⁶ Left without a broadcast outlet in the Tri-State region for the 15 Knicks and Rangers games dropped by WWOR, MSG Network picked up cable carriage of these games, plus an additional 10 games that had never been regularly carried by either cable or broadcast television. These additional games were folded into MSG Network's basic cable schedule.

to broadcast Knicks and Rangers games during prime-time on weeknights. The press reported that WWOR's unhappiness with broadcasting the teams in prime-time also stemmed from its desire to make room in prime-time for the introduction of news and programming such as "The Morton Downey Show" in the near term, and for re-runs of such popular situation-comedies as "Cosby" and "Kate & Allie," in the longer term. (See Exhibit 2).

to ~~relocate~~ ~~free up~~ ~~prime time~~ ~~for potentially more profitable~~

to amend the existing agreement by incorporating a broadcast schedule that contemplated that only 7 out of 45 games be broadcast during prime-time hours, and a total of 21 games be telecast on a delayed basis. MSG objected to this unprecedented schedule change because it would have gutted the prime-time exposure that the Knicks and Rangers had enjoyed for more than twenty years and would have dramatically impaired the games' popularity with the viewing public.

In order to reduce friction between the parties for the remaining two years of the agreement, MSG and WWOR continued to attempt to resolve their differences, and finally concluded an amendment of the 1985 agreement in October of 1987. In return for WWOR agreeing to broadcast 45 Knicks and Rangers games during the remaining two seasons, MSG conceded that WWOR could increase the number of non-prime-time games and delayed-broadcast games in the 1988/89 season to the level of non-prime-time and delayed games it had broadcast during the 1987/88 season.

As the 1989 expiration date neared, WWOR made clear it was still uninterested in extending the arrangement, and MSG decided to approach WPIX, the only other VHF independent broadcast station in the New York City market.

On June 27, 1989, MSG Network offered WPIX broadcast rights to an aggregate of 25 Knicks and Rangers games for three seasons starting in 1989. MSG Network also offered to discuss with WPIX over-the-air carriage of Knicks and Rangers away play-off games. This

proposal, along with an offer of 50 Yankees games, was rejected by WPIX.

Nearly a year later, on May 10, 1990, MSG Network repeated its offer to WPIX of 20 regular season Knicks and Rangers games annually. Again, this proposal was rejected.

On the expiration of the WWOR contract after the close of the 1988/89 basketball and hockey seasons, MSG was simply unable to find an over-the-air TV outlet for these games. MSG's only alternative was to begin cable-casting all the Knicks and Rangers games.

3. Conclusion

As the preceding history makes clear, despite MSG's interest in retaining an over-the-air broadcast outlet for a significant portion of Knicks and Rangers games, MSG was forced to carry these games on its cable network in order to preserve viewer access to the games. The broadcast stations available to air the games have for their own commercial and editorial reasons chosen to carry non-sports programming in lieu of Knicks and Rangers games. Indeed, four years before relinquishing its exclusive broadcast rights to a total of 60 Knicks and Rangers games, WWOR reduced its broadcast schedule of such games by 25%, began to select a broadcast schedule that emphasized less popular non-prime-time slots, and began to postpone the broadcast of the games to late-night periods, thus diminishing their attractiveness to the viewer. When WWOR finally dropped the games,

MSG Network picked up the games, rather than see them lost entirely to viewers.

In sum, what at first glance might be misconstrued as an example of sports programming migration, is actually an example of a cable programmer stepping in to preserve viewer access to games that would otherwise be blacked out. None of the three postulates of sports migration are present here: MSG Network has never sought to show the games exclusively on cable; neither WWOR (nor WPIX for that matter) has shown any desire to continue broadcasting the games; and consumer access to the games has been preserved rather than lost. The fact remains that although some Knicks and Rangers games now carried on cable were once carried over-the-air, in the absence of MSG Network's carriage of those games, they would not now be available to the viewer. Accordingly, there has been no decrease in the accessibility of such programming to the consumer; on the contrary, MSG Network's cable-casting of such games has preserved the public's access to these games.

B. Yankee Games

There is a perception that the acquisition by a cable channel of exclusive rights to the video distribution of sporting events is likely to contribute to migration of such events from over-the-air television to cable.⁷ MSG contends that perception is not accurate in the New

⁷ House Report at p. 126; see also NOI at paragraphs 13, 16.

York market, and runs counter to MSG Network's experience with respect to New York Yankees games.

In 1988, MSG Network reached an agreement with the Yankees granting MSG Network exclusive video distribution rights for the 1990's. However, MSG Network has never attempted to exercise those video distribution rights exclusively. On the contrary, despite the flagging interest of New York broadcasters in carrying local teams, MSG Network has retained -- and is continuing actively to seek -- broadcast outlets for carriage of at least 50 regular Yankee games per season.

1. History of Video Distribution of Yankee Games

From 1980 through the 1986 season, WPIX had the right to telecast 110 Yankees games per season. Sportschannel, a regional premium cable sports channel, had the right to cable-cast another 40 games per season.⁸ In the 1987 and 1988 seasons, WPIX dropped its slate of games to 50. The 60 games dropped by WPIX were picked up by Sportschannel, which broadcast on a premium basis a total of 100 Yankees games for each of those two seasons.

⁸ Major league baseball teams play 162 games per season. Generally, 150 are licensed by each team for local broadcast, cable-cast, or both. Accordingly, until 1991, twelve Yankees games per season were set aside for national broadcast video distribution by Major League Baseball. Currently, eight Yankees games are designated for national video distribution per season.

On November 18, 1988, MSG Network and the Yankees reached an agreement for acquisition of twelve years of media exploitation rights to all Yankees games, subject only to the existing Yankees' contract with WPIX and to a right of first refusal granted to WPIX in that contract. WPIX declined to match MSG Network's offer.

2. MSG Network's Attempts to Arrange Telecasts of 50-55 Yankees Games

Rather than deal directly with the Yankees, WPIX instead made an offer to MSG Network on December 6, 1988 to acquire broadcast rights to 50 games per year for ten years, at a price equal to 90% of MSG's cost for such games. At that time, MSG Network did not find it economically attractive to subsidize WPIX' broadcast of Yankees games in the amount of 10% of MSG Network's costs in acquiring each game, and rejected WPIX' offer.

However, MSG Network was still interested in selling at least 50 games for broadcast over-the-air. The primary reason was that MSG Network sought a partner with which to share some of the risk of acquiring Yankees' games for such a long period of time. On June 17, 1989, it counter-offered to WPIX that the station carry 50 regular season Yankees games per year for three seasons commencing in 1991 at the pro rata cost per game to MSG Network, plus payment of production costs (including overhead) and interest at 9% reflecting the time-value of money. WPIX rejected that offer.

Nearly a year later, on May 10, 1990, MSG made another attempt to sell WPIX over-the-air rights, offering WPIX the right to

purchase the 50.55% of the rights for the year at

over-the-air games to cable carriage. In fact, since MSG Network
renewed its agreement with the Yankees in 1999, WPIX has

future. But assuming MSG Network is proven wrong, the question remains whether Congress should act to keep Yankee baseball on broadcast television. We submit that it should not.

One of the over-arching principles of the Cable Act of 1992 is that Congress, rather than legislate what it perceives to be socially desirable outcomes, should instead "rely on the marketplace, to the maximum extent feasible..." to achieve public policy goals. Cable Act of 1992, Section 2(b)(2). The question of whether Yankee games remain available to viewers over-the-air will be determined by unpredictable events that will in turn affect market forces: whether the Yankees perform well enough to make their carriage on broadcast television more lucrative than other available programming, whether sports or otherwise. In other words, if the Yankees can, through their performance in future seasons, engender the kind of popular support that they enjoyed in the past, there will be a place for them on broadcast television.

II

"Consumer Welfare" Is Served by MSG Network's Carriage of an Extensive and Varied Menu of Sporting Events and Commentary

MSG Network acknowledges the validity of the Commission's assumption that the relevant public policy goal in connection with the issue of sports programming migration is "consumer welfare" -- namely, the maximization of "the value to viewers of the menu of sports events telecast...." NOI at paragraph 9. In the following

section, MSG Network will show that the menu of sports programming has not only been significantly increased by the growth of MSG Network into a full-service regional sports channel, but this achievement has been realized without taking sports programming away from broadcast television.⁹ We will demonstrate further that the contributions of MSG Network have been particularly significant in the production of local sports commentary and news. Finally, contrary to the typical misconception that sports programming carried on cable television serves fewer interested viewers than broadcast television, MSG Network will demonstrate that although many consumers have difficulty receiving sports programming telecast by broadcast stations located in the New York City area, they do have the potential to receive sports programming in which they are interested via cable.

1. The Menu of Sports Programming Available to Viewers in This Region Has Grown Enormously

MSG Network began in 1968 as a captive outlet for sporting

events promoted and held at Madison Square Garden. From its

comprehensive sports programming channel, and had begun carrying a large number of events and sports programs that were of interest to its regional audience, even if the sporting events had a venue other than Madison Square Garden. By 1990, MSG Network's slate of major sporting events had grown to approximately 370 events annually, almost three times as many as were shown in the early 1980's.

Even more dramatic has been the increase on MSG Network during the 1980's of total sports coverage, namely, the total menu of sports programming carried by the network, including the defined events mentioned above. From October 1, 1981 to September 30, 1982,¹¹ MSG Network carried 280 sports programs, for a total of 526 hours of programming per year. In the same twelve-month period in 1990-91, MSG Network carried eleven times as many sports programs (3,416), resulting in a 543% increase in total hours of sports programming carried. (See Exhibit 3).¹²

Not only has MSG Network provided an exponential increase in the total number of programs and hours of sports programming shown to viewers in the New York region, but the diversity of its sports programming has grown dramatically as well. Ten years ago, sports

¹¹ The use of a "seasonal" year beginning October 1 and ending September 30 is customary industry practice in referring to sports scheduling and carriage.

¹² MSG Network delivers so many major sporting events that cable systems carrying MSG Network provide 96% of MSG Network subscriber households with a second channel, referred to as "MSG II," on which live sporting events with conflicting schedules are cable-cast simultaneously. The availability of MSG II further increases viewer access to sports events.